IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

CHAMBER SUMMONS NO.1302 OF 2003
IN
SUIT NO.21 OF 2003
IN
PROBATE PETITION NO.125 OF 2002

Meher Naushir Mistry .. Plaintiff/ Petitioner

Vs.

Mrs.Armaity H.Vania .. Defendant/ Caveatrix

None for the plaintiff

Mr.S.Kothari i/b Mulla & Mulla Craigie Blunt and Caroe for the Caveatrix/Defendant

CORAM : S.U.KAMDAR, J

DATED : 9TH JUNE 2005

P.C.:

1. The present Chamber Summons is taken out for amendment of the petition for seeking to include certain items set out in the Schedule to the petition. Schedule also includes certain bank accounts which were in the name of the deceased alongwith the various parties including caveator jointly. The learned counsel for the caveator has brought to my attention an order dt.16.10.03 in

Notice of Motion No.2660 of 2003 and has interalia contended that in view of the order passed by the learned single Judge in aforesaid Notice of Motion, the present chamber summons should be dismissed.

2. I am unable to subscribe to the said view. Firstly because the order passed by the learned single Judge is an interlocutory order of the injunction and cannot determine the proceedings which has been initiated by way of amendment. Secondly, the learned single Judge has himself observed in the order that whether the said account standing in the name of the deceased with the defendant forms part of the estate or not can be decided only at the final hearing of the main petition and not at the interlocutory stage. If even the amendment is not granted then the controversy that whether the accounts which are set out in the schedule to the Chamber Summons which were jointly held along with the deceased forms part of the schedule or not cannot be decided in the present petition.

3. In view thereof, it is necessary that

amendment should be granted. The issue whether the amounts lying in the said account forms part of the estate of the deceased or not will be determined at the final hearing of the petition. In the aforesaid circumstances, Chamber Summons is made absolute in terms of prayer clause (a). No order as to costs.